

Summary Guidance For Religious Accommodations and Exemptions From COVID-19 Vaccination Mandates*



**Caveat: This Summary Guidance is provided merely as a courtesy and is not intended to provide legal information or advice to any person or entity. The information provided herein should not be used except in conjunction with the individualized advice of legal counsel familiar with the user's specific situation. This is a fluid and rapidly changing area of the law, and, therefore, the accuracy of the information contained herein should always be verified by independent research.*

EMPLOYMENT

- Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, prohibits many private and government employers from discriminating against their employees on the basis of—among other things—religion. 42 U.S.C. § 2000e et seq.
- Title VII entitles an employee to request exemptions from the employer's directives that would violate the employee's sincerely held religious beliefs. 42 U.S.C. § 2000e(j).
- Employers imposing vaccination mandates must recognize legitimate requests from their employees to be exempted from such vaccination programs based upon the objecting employee's sincerely held religious beliefs, unless to do so would impose an undue hardship on the employer. What constitutes an undue hardship may depend on the work setting at issue.
- Religious accommodation requests should be in writing and clearly articulate the religious basis for the accommodation request. Religious accommodation requests should avoid asserting non-religious objections to the vaccines or the vaccination program, such as health, medical, or political objections.
- It is inappropriate for an employer to demand that an employee support their religious accommodation request with statements from the employee's church or clergy.
- Conduct of an employee that appears to be inconsistent with the religious beliefs underlying the employee's religious objection to the COVID-19 vaccines may undermine the employee's religious accommodation request. E.g., the employee asserts a religious objection to a COVID-19 vaccine on the ground that his body is the "temple of the Holy Spirit" but ingests other medications, foods, or substances with potentially harmful effects.
- Employers who grant religious accommodations might be able to require unvaccinated employees to wear masks, socially distance, undergo COVID-19 testing, telework, or be reassigned. EEOC, What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws – Technical Assistance Questions and Answers (updated May 28, 2021), <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>.

STUDENTS

- Generally speaking, mandatory student vaccination programs are not unconstitutional and do not violate the religious free exercise rights of either the students or the students' parents.
- Students may be entitled to a religious exemption from a mandatory student vaccination program if:
 - the school voluntarily offers religious exemptions;
 - there is a state statute providing students with religious exemptions; or
 - the student vaccination program provides non-religious exemptions to students, but not religious exemptions.

CHURCHES

- Although the fluidity of the COVID-19 pandemic and related government restrictions has resulted in an evolving legal landscape over the last 18 months, the Supreme Court has established that government mandates that treat church gatherings worse than similar non-religious activities are unconstitutional. Legal challenges based on disparate treatment of churches and comparable secular activities have been successful in the COVID-19 context (and other contexts). Thus, churches may want to consider challenging any vaccination requirements that treat church gatherings less favorably than similar non-religious activities.

U.S. MILITARY

- The U.S. military recognizes that service members have the right to observe the tenets of their religion. DoD Instruction 1300.17—Religious Liberty in the Military Services.
- Active-duty service members have the right to request a religious accommodation from a mandatory COVID-19 vaccination program established and administered by the U.S. military.
- Section 3 of DoD Instruction 1300.17 sets forth the procedures for service members requesting religious accommodations, how such requests are reviewed, factors for consideration, and appeal processes.
- An active-duty service member facing a general or special court martial will be appointed military counsel, at no cost to the service member. However, a service member also has the right, at the service member's expense, to hire civilian legal counsel of the service member's own choosing. 10 U.S.C. § 838(b)(2), (3) and (4).

Frequently Asked Questions

Religious Accommodations and Exemptions From COVID-19 Vaccination Mandates



MANDATORY MASKING

Q: My employer or school requires masks. I have a religious objection. Do I have any recourse?

First, you must ensure that you have a bona fide religious objection. Few, if any, religions have specific teachings against wearing masks. You must be able to articulate a religious belief that the mask requirement violates. Medical, cultural, or political objections do not qualify as a bona fide religious objection. Some plaintiffs have sued based on religious objections to wearing masks in public, but courts have rejected those to date.

MANDATORY VACCINATION

Q: Is being forced to get the vaccine unconstitutional? Specifically, aren't there religious freedom issues?

Courts have ruled for over a century that the government may require mandatory vaccines in certain circumstances. Religious objectors may be entitled to accommodations in some circumstances. For more information on mandatory vaccines in employment and education, see the document entitled "Summary Guidance for Religious Accommodations and Exemptions from COVID-19 Vaccination Mandates" on our website and the additional FAQs below.

Q: Are there free speech issues with mandatory vaccines?

Not in most circumstances. Private employers and private schools are not subject to the First Amendment. Even in cases where a government employer or public school may require you to disclose your vaccination status, it would not likely be considered compelled speech under the First Amendment.

Q: My school or employer requires a COVID vaccine but offers religious “accommodations” that include wearing masks or periodic COVID testing. I’m afraid of being singled out. What can I do?

In most situations, employers or schools that provide such religious accommodations are legally permitted to do so. However, if you experience actual repeated and severe harassment in the workplace based specifically on your religious beliefs, you may have claims based on workplace harassment. But feeling singled out, without more, is unlikely to violate the law.

EMPLOYMENT

Q: I work for an employer that requires vaccination, but I have religious objections. What are my options?

You must first determine if your objection is based on a sincerely held religious belief against taking any of the available vaccines (since they are different), or whether your objections are based on other medical, health, cultural, or political, but not religious, concerns. Many people have medical or other concerns which do not rise to the level of an actual religious belief. A belief that taking a vaccine is unwise or could be harmful will normally be considered a medical or health objection, not a religious objection.

Private Employers

Private employers may generally impose work-related job requirements on their employees so long as the requirements do not violate the law. However, if an employer institutes a policy requiring its employees to take a vaccine, and to take the vaccine would violate your sincerely held religious beliefs, the employer may be required to grant you a reasonable accommodation if it can do so without incurring an undue hardship. A reasonable accommodation may include a mask or social distance requirement, temperature checks, COVID-testing, reassignment, or other measures.

Government Employers

Government employers may also have to grant reasonable accommodations to their employees who have sincerely held religious beliefs that conflict with the employer’s policies or directives, just as private employers do. In addition, unlike private employees, government employers must also respect the constitutional rights of their employees. So a government employee may also have constitutional rights to avoid the government employer’s vaccine mandates. For example, if a government employer offers any exemptions to a mandatory vaccine requirement, then the Constitution may require that it also offer an exemption for religious reasons.

EDUCATION

Q: I or my child attend(s) a school that requires COVID vaccination to attend.
I have a religious objection to all of the available COVID vaccines.
Do I have any options?

You must first determine if your objection is based on a sincerely held religious belief against taking any of the available vaccines (since they are different), or whether your objections are based on other medical, health, cultural, or political, but not religious, concerns. Many people have medical or other concerns which do not rise to the level of an actual religious belief. A belief that taking a vaccine is unwise or could be harmful will normally be considered a medical or health objection, not a religious objection.

If you do have 1) a sincerely held religious objection to taking all vaccines, or 2) a specific, sincerely held belief rooted in your faith that taking these particular COVID-19 vaccines would violate your sincerely held religious beliefs in a way that you can articulate, then you may be entitled to request an accommodation, depending on the situation. You should also first check to see if any other objections to the vaccines are permitted, such as medical exemptions, or pregnancy. If you receive an accommodation, you should be willing to accept other requirements such as wearing a mask, temperature checks, and/or regular COVID-testing.

NON-RELIGIOUS ACCOMMODATIONS AND EXEMPTIONS

Q: I believe my objections to the COVID-19 vaccine are likely non-religious objections. Do I have any recourse against a vaccine mandate by my employer or my or my child's school?

It depends on your situation. Employers and schools sometimes offer accommodations and exemptions for reasons other than sincerely held religious beliefs, most commonly health accommodations or exemptions for employees and students who have medical conditions that put them at particular risk if they are required to receive a vaccine. The Americans with Disabilities Act (ADA) also has a medical accommodation provision similar to Title VII's religious accommodation in employment provision.



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